

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Application for Review of Bureau Denial of
True Wireless, LLC's Request for Review

WC Dockets 11-42, 03-109

**APPLICATION FOR REVIEW OF BUREAU DENIAL OF TRUE WIRELESS, LLC'S
REQUEST FOR REVIEW**

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In the Matter of

Application for Review of Action Taken
Pursuant to Delegated Authority Concerning
Request for Review by True Wireless, LLC of
Decision of Universal Service Administrator

WC Dockets 11-42, 03-109

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**APPLICATION FOR REVIEW OF BUREAU DENIAL OF TRUE WIRELESS, LLC'S
REQUEST FOR REVIEW**

In accordance with 47 C.F.R. §§ 1.115, 54.722, True Wireless, LLC ("True Wireless") hereby files this Application requesting review of a decision made pursuant to delegated authority by the Wireline Competition Bureau ("Bureau") denying True Wireless' Request for Review of a decision of the Universal Service Administrative Company ("USAC"), the administrator of the Universal Service Fund ("USF").¹

I. INTRODUCTION AND SUMMARY

On May 7, 2018, the Bureau, acting on delegated authority, issued an Order denying True Wireless' request for review of a December 11, 2013 USAC decision (the "Bureau Denial").² The USAC decision at issue was an in-depth data validation ("IDV") of True Wireless' subscriber data, which found that True Wireless had a total of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** intra-company duplicate Lifeline subscribers, and had improperly claimed Lifeline support for these intra-company duplicates.

As explained herein, the Bureau Denial should be reversed, because USAC's IDVs misinterpreted and failed to apply the "same name, same address" standard – which during the period at issue was the only Commission guidance on what constitutes an "intra-company duplicate." Instead, the Bureau's decision erroneously allowed USAC to apply a novel and vague standard, which USAC itself invented (in contravention of the Commission's rules), under which two subscribers are intracompany duplicates if they have *similar* names and addresses

¹ *In the Matter of Requests for Review of Decisions of the Universal Serv. Adm'r by Assist Wireless, Inc., et al.*, WC Docket No. 11-42, et al., DA 18-464, 2018 WL 2112971 (May 7, 2018) ("Bureau Denial") (denying *Request for Review by True Wireless, LLC*, WC Docket Nos. 11-42, 03-109, (filed Mar. 4, 2014) ("Request for Review")).

² Bureau Denial.

(with no announced standards on what points of similarity are required). The USAC “similarity” standard conflicts with the “same name, same address” guidance. Holding True Wireless to that different standard would be grossly unfair, and would violate core principles of fair notice and due process, because it was not announced prior to True Wireless’ actions at issue in the IDVs. Even if it were reasonable for the Commission to abandon the earlier standard, then in the interest of fair notice it needs to explain what its new standard is. That is, the Commission must explain how *similar* two different names or addresses must be in order to be considered the *same*.

The costs of seeking review of USAC’s decision (and now the Bureau’s erroneous denial of review), far exceeds the amount of funding involved here. The monthly funding associated with the subscribers identified by USAC as intra-company duplicates is **BEGIN**

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END CONFIDENTIAL. Nonetheless, True Wireless

continues to pursue review for several reasons. First, there are important principles at stake here, both with respect to notice to carriers what the governing rules are for the Lifeline program, and with respect to the meaning of an “intra-company duplicate.” Second, a series of Commission enforcement actions – including one involving True Wireless – in which multi-million dollar penalties have been proposed in a series of Notices of Apparent Liability for small numbers of alleged intra-company duplicates have increased the risk to carriers that USAC errors, even with respect to small amounts of money, as here, could have severe financial consequences for True Wireless. For these reasons, True Wireless has filed the instant Application for Review.

II. CONCISE STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Did the Bureau err in denying True Wireless' Request for Review of USAC's finding that True Wireless requested Lifeline support for a certain number of alleged intra-company duplicates where USAC failed to adhere to, and impermissibly interpreted, the Commission's "same name, same address" standard by effectively basing its IDV findings on a looser "similar name, similar address" policy?

2. What constitutes an intra-company duplicate? If the Commission is abandoning the plain meaning of the "same name, same address" standard, then what parameters must be used by USAC and carriers for identifying intra-company duplicates that are similar enough to be considered the "same"?

3. Even if the Commission were to abandon the plain meaning of the "same name, same address" standard, would it be inconsistent with fundamental notions of justice and due process to retroactively hold True Wireless, LLC accountable for a standard that did not exist when True Wireless made the claims for Lifeline support at issue here?

III. SPECIFIC FACTORS WARRANTING COMMISSION CONSIDERATION

Multiple factors warrant the Commission's attention to the questions presented here concerning the Bureau's denial of True Wireless' request for review of USAC's IDV findings. The Bureau Denial implicates the following factors, which the Commission's rules indicate warrant Commission review.³ First, the action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, and established Commission policy. Second, the Bureau's action involves a question of law or policy which has not previously been resolved by

³ See 47 U.S.C. § 1.115.

the Commission. Third, the Bureau's denial rests on an erroneous finding as to an important or material question of fact. Finally, the Bureau's denial rests on prejudicial procedural error, ignoring fundamental principles of fair notice and due process.

A. The Bureau's action is in conflict with case precedent and established Commission policy.

As explained below, the Bureau's decision to uphold USAC's action conflicts with established Commission precedent on what constitutes an "intra-company duplicate." The only official Commission statement directly addressing the situation of intra-company duplicates is a letter from the Chief of the Wireline Competition Bureau to the acting head of USAC in June 2011. That letter, issued after specific direction by the Commission in the *Duplicative Payments Order*,⁴ succinctly explained that an intra-company duplicate is the "same name, same address within one ETC's records."⁵ That standard is plainly *different* than USAC's, which amounts to a new policy under which the standard is "similar name, similar address," with no guidance on how to evaluate or weigh similarities.

The Bureau's action is also in conflict with 47 C.F.R. § 54.702(c), the Commission rule that expressly forbids USAC from creating policy and interpreting unclear Commission rules.

B. The Bureau's action involves a question of law and policy which has not previously been resolved by the Commission.

Even if the Bureau were correct that USAC's actions could be reconciled with Commission precedent (which they cannot), the Bureau's departure from the plain meaning of

⁴ *In the Matter of Lifeline and Link Up Reform and Modernization*, Report and Order, WC Docket No. 11-42, 26 FCC Rcd 2770 (FCC rel. June 21, 2011) at ¶ 1 ("*Duplicate Payments Order*") at ¶ 2 ("Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.").

⁵ Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, USAC, 26 FCC Rcd 8588, 8590, 8592 (WCB 2011) ("*June 2011 Guidance Letter*").

the “same name, same address” standard raises questions of law that the full Commission would need to resolve. First, what constitutes an intra-company duplicate? If the Commission is setting aside the plain meaning of the “same name, same address” standard, then what are the parameters that USAC must use to identify intra-company duplicates? That is, how *similar* must different names and addresses be, such that the Commission will require USAC and carriers to treat them as they were actually the *same*? These are essential – and unanswered – questions, were the Commission to rule that the “same name, same address” standard cannot be taken at face value (that is, that the name and address must be identical).

C. The Bureau’s denial rests on an erroneous finding as to an important or material question of fact.

The Bureau’s denial rests on an erroneous finding as to an important, material question of fact, namely whether True Wireless actually requested Lifeline support for intra-company duplicate subscribers as alleged by USAC. USAC erroneously found that True Wireless had requested Lifeline support for intra-company duplicate subscribers in certain instances. While USAC’s findings relied heavily on its ill-conceived “similar name, similar address” policy, it also rested on mistaken factual premises. In particular, the Bureau failed to consider evidence True Wireless submitted, which showed that, for example, supposed duplicates identified by USAC’s methods were in fact different subscribers in the same apartment complex.⁶

D. The Bureau’s denial rests on prejudicial procedural error, ignoring fundamental principles of fair notice and due process.

The Bureau’s decision appears to rely on USAC’s novel conception of what constitutes an intra-company duplicate, which treats different names and addresses as the “same” based on

⁶ Request for Review, at 6-9, 13-14, Affidavit of Christopher Melton (Mar. 3, 2014) (“Melton Affidavit”).

still-unspecified metrics of similarity. Setting aside the wisdom of such a standard, such a standard was *never announced* by the Commission (or USAC) prior to the claims for Lifeline support at issue here. To sanction True Wireless for “failing” to apply an unspecified standard that USAC invented after the conduct at issue would be at odds with fundamental principles of justice and due process. “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required,” *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012) (citation omitted). Retroactive application of a USAC-invented standard would be particularly egregious here, where the only Commission precedent on point plainly established a *different* standard – “same name, same address” – which True Wireless justifiably relied upon and endeavored to apply.

IV. STATEMENT OF THE RELEVANT MATERIAL FACTS

A. Background Regarding True Wireless

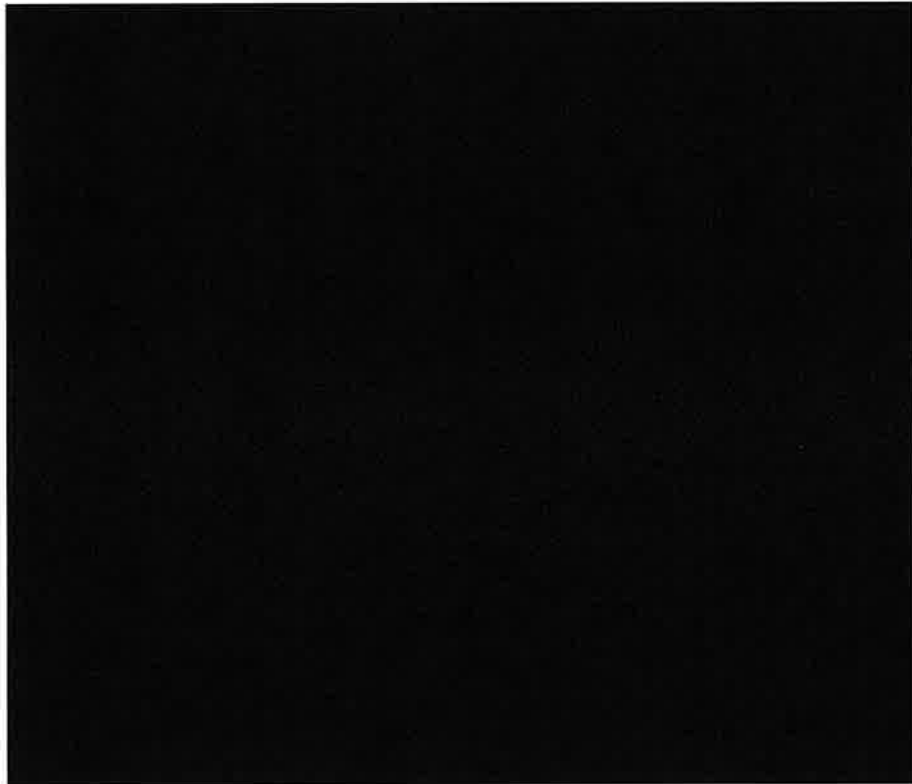
True Wireless has been providing service since mid-2010 and focuses primarily on providing service to low income consumers. True Wireless has been designated an eligible telecommunications carrier (“ETC”) in five states: Arkansas, Maryland, Oklahoma, Rhode Island and Texas. Since it began participating in the Lifeline program, True Wireless has worked diligently to minimize waste, fraud and abuse in the program, and has adopted rigorous internal mechanisms to prevent duplicates within True Wireless’ subscriber base. True Wireless was a strong supporter of the Commission’s initiatives to reform the Lifeline program to minimize waste, fraud, and abuse, especially through the Commission’s development of the National Lifeline Accountability Database (“NLAD”). Moreover, True Wireless supports implementation of the Commission’s National Verifier initiative, which likewise aims to eliminate waste, fraud and abuse.

B. The USAC Decision

The underlying USAC decision, review of which was denied by the Bureau, consists of the following USAC IDV decision dated December 31, 2013, which is attached as **Confidential**

Exhibit 1:

BEGIN CONFIDENTIAL



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C. True Wireless' Process for Screening Intra-Company Duplicates

During the time that was the focus of USAC's IDVs, **BEGIN CONFIDENTIAL**

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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- 7 Melton Affidavit at ¶ 3.
 - 8 Melton Affidavit at ¶ 4.
 - 9 Melton Affidavit at ¶ 5.
 - 10 Melton Affidavit at ¶ 5.
 - 11 Melton Affidavit at ¶ 6.

[REDACTED]

[REDACTED]

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- 12 Melton Affidavit at ¶ 7.
 - 13 Melton Affidavit at ¶ 8.
 - 14 Melton Affidavit at ¶ 9.
 - 15 Melton Affidavit at ¶ 10.
 - 16 Melton Affidavit at ¶ 11.
 - 17 Melton Affidavit at ¶ 12.

CONFIDENTIAL

²⁰ Melton Affidavit at ¶ 15.

V. USAC DID NOT FOLLOW COMMISSION GUIDANCE DEFINING INTRA-COMPANY DUPLICATES, INSTEAD IMPOSING A NEW POLICY IT INVENTED.

USAC failed to properly follow the Commission's guidance in determining that True Wireless requested Lifeline support for **START CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** alleged intra-company duplicates in the referenced decision.

USAC erred in determining that these subscribers were intra-company duplicates because it based its determinations on *USAC-created* policies that were not official Commission rules or guidance (and, indeed, USAC impermissibly interpreted Commission rules). The Commission's *only* express guidance for dealing with the question of intra-company duplicates is a June 2011 letter from the Wireline Competition Bureau to USAC directing USAC to recover funding provided for services to an "intra-company duplicate" subscriber, which was described as "same name, same address within one ETC's records."²¹ Indeed, the Bureau's Denial recognizes that the *June 2011 Guidance Letter* "outlined the process USAC should use to identify and resolve duplicative Lifeline subscribers."²²

USAC was required to adhere to that process. The Commission rules expressly prohibit USAC from creating its policies or making its own interpretation of Commission rules. USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."²³ Yet that is exactly what happened here because some of the relevant subscriber information is *similar* to the information of another subscriber but not the *same* (indeed, in some instances, there is little to no similarity). Subjective judgments of similarity, however, are not permitted under Commission rules. The governing standard is "*same name, same address.*"

²¹ June 2011 Guidance Letter.

²² Bureau Denial, ¶ 3.

²³ 47 C.F.R. § 54.702(c).

BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL of the subscribers identified by USAC have the same name and address as any other True Wireless subscriber, and therefore, USAC's findings in the IDVs must be vacated.

A. The Commission Has Defined An Intra-Company Duplicate As Individuals With The "Same Name, Same Address"

Although the Commission has adopted a rule that prohibits an ETC from providing more than one Lifeline-supported services to a consumer -- 47 C.F.R. § 54.409(c)²⁴ -- that rule does not define an intra-company duplicate. Nor does any other FCC rule or order describe what constitutes a duplicate. For example, in a 2011 order, the Commission adopted "measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer,"²⁵ and amended its rules to "ensure that consumers do not, whether inadvertently or knowingly, subscribe to multiple Lifeline-supported services."²⁶ However, the *Duplicative Payments Order* does not specify what parameters are to be used by the Commission or USAC to identify duplicative Lifeline claims for the same consumer.

The first -- and only -- official Commission statement directly addressing the situation of intra-company duplicates is a letter from the Chief of the Wireline Competition Bureau to the acting head of USAC in June 2011.²⁷ That letter was issued at the specific direction of the Commission in the *Duplicative Payments Order* in connection with Commission's amendment rules to clarify that a given consumer is only entitled to one subsidized service and to expressly

²⁴ The rule states in pertinent part that "in order to constitute a qualifying low-income consumer, a consumer must not already be receiving a Lifeline service, and there must not be anyone else in the subscriber's household subscribed to a Lifeline service."

²⁵ Duplicate Payments Order at ¶ 1.

²⁶ Duplicate Payments Order at ¶ 8.

²⁷ June 2011 Guidance Letter.

require ETCs to take steps to try to prevent consumers from signing up for multiple services.²⁸

The overall focus of the *June 2011 Guidance Letter* was the problem of a single subscriber obtaining multiple, subsidized services from different ETCs. However, the letter did expressly, if briefly, address the issue of intra-company duplicates:

All ETCs will continue to provide Lifeline-supported service to [subscribers receiving service from more than one ETC] until notified by USAC, pursuant to section 54.405 of the Commission's rules, as amended, to de-enroll certain subscribers, and shall be reimbursed for the Lifeline benefits provided to subscribers up until the date of de-enrollment, subject to normal adjustments, *recoveries for* bad, uncorrected data and *intra-company duplicates (same name, same address within one ETC's records)*, and other reporting requirements. *USAC shall recover support for* any subscriber for which subscriber data cannot be substantiated by the ETC and *intra-company duplicative subscribers (same name, same address within one ETC's records)*.

June 2011 Guidance Letter at 5 (emphasis added). The emphasized language is entirely clear: an intra-company duplicate is a situation in which an ETC is providing subsidized service to two putative subscribers with the "same" name and the "same" address. In practical terms, because this guidance gives no direction, the word "same" must be interpreted to mean "same" – *i.e.*, literally identical.²⁹ Indeed, given that the Commission was fully aware that ETCs with large subscriber bases would necessarily use computerized/electronic means to screen their subscriber lists, the most reasonable interpretation of that term is a subscriber with a literally identical name and address to another subscriber already in the ETC's list.

²⁸ *Duplicate Payments Order* at ¶ 2 ("Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.").

²⁹ Webster's Dictionary defines the word "same" as an adjective meaning "not different" and "exactly like someone or something else." See <http://www.merriam-webster.com/dictionary/same>.

B. USAC Impermissibly Made Policy Decisions In Identifying The Alleged Intra-Company Duplicates

USAC is “an independent, not-for-profit corporation designated by the Commission as the administrator of the [USF].”³⁰ Section 54.702(c) of the Commission’s rules explicitly provides that USAC “*may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.*”³¹ USAC also is required by its contract with the Commission to strictly and literally apply the Commission’s rules regarding the Universal Service program without interpretation or modification,³² and where the statute or the Commission’s rules are unclear, or do not address a particular situation, USAC *must* seek guidance from the Commission.³³

USAC indicated in its IDV training materials that it had a “Low Income Duplicate Detection System” that it uses to (1) “standardize addresses” through the USPS’s address matching system and (2) conduct name comparison using “lexical and phonetic approaches” to

³⁰ See “About USAC” page on the USAC website, available at <http://www.usac.org/about/> (last visited Feb. 19, 2014).

³¹ 47 C.F.R. § 54.702(c) (emphasis added).

³² See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008) available at <http://transition.fcc.gov/omd/usac-mou.pdf> at Section III(B) (“The Commission is responsible for the overall management, oversight, and administration of the USF, *including all policy decisions*,” emphasis added) and Section III(A) (USAC “is responsible for the daily administration of the USF. In conducting these duties, [USAC] administers the fund on behalf of the Commission and is subject to the Commission’s oversight and instructions. [USAC] shall administer the USF consistent with the rules, orders, and directives promulgated by the Commission ...”) (emphasis added) (“USAC MOU”).

³³ See 47 C.F.R. § 54.702(c) (“Where the [Communications] Act or the Commission’s rules are unclear, or do not address a particular situation, [USAC] shall seek guidance from the Commission.”); USAC MOU at Sections III(A) and VI(J).

determine name variances.³⁴ It was (and remains) impossible for True Wireless and other ETCs to know what “lexical and phonetic approaches” USAC employed, or the extent to which USAC uses manual processes and/or subjective judgments to identify potentially duplicative names/addresses. The IDV decision did not indicate how the alleged intra-company duplicates were identified and USAC has not disclosed any further details about its “lexical and phonetic approaches” to intra-company duplicate detection.

USAC appeared to use a different standard when searching for duplicates as part of the Payment Quality Assurance (“PQA”) process as opposed to IDVs.³⁵ Moreover, the NLAD, which at the time of the IDV was just in the final stages of implementation, appeared to use *yet another* – and seemingly more restrictive – algorithm for identifying intra-company duplicates that utilizes subscriber names, addresses, DOBs and last four SSN digits.

In any event, it is apparent that USAC devised a secret, proprietary “lexical and phonetic” system for attempting to detect alleged intra-company duplicates that goes beyond the “same name, same address” definition of intra-company duplicates established by the Commission. Thus, it is equally clear that USAC violated 47 C.F.R. § 54.702(c) and the *USAC MOU* by making policy decisions and erroneously interpreting the rules and directives of the Commission with respect to its findings of intra-company duplicates in the appealed decision.

³⁴ Presentation, FCC-USAC Joint Training Event, In-Depth Data Validations, June 19, 2012, at 11.

³⁵ In the PQAs, USAC used the following protocol for identifying duplicates: same first, same last name, and same address, without considering any secondary address information such as apartment number.

C. USAC's Erroneous Findings Of Intra-Company Duplicates

As part of the IDV process, USAC provided True Wireless with spreadsheets that reflect the results of USAC's review of True Wireless' subscriber lists. The results of True Wireless' own review of those spreadsheets are contained in **Confidential Exhibit 2** and are summarized as follows:

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Of critical importance is the fact that **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the intra-company duplicates identified by USAC meet the Commission's governing "same name, same address" standard required for the proper finding of an intra-company duplicate.³⁶ **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of alleged duplicates were individuals with the same name, but residing at different addresses – normally situations in which male family members with the same name (*e.g.*, father and son) live near each other. **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the

³⁶ In each case, the duplicate subscriber appeared on True Wireless' subscriber list for only one month, demonstrating that True Wireless quickly resolved the issue even in these very rare incidents where an actual duplicate managed to slip through the cracks.

alleged duplicates involved situations with two individuals with similar but not identical names and the same address.

BEGIN CONFIDENTIAL [REDACTED] **END CONFIDENTIAL** of the alleged duplicates involved subscribers with different names *and* different addresses, and USAC's methodology yielded some bizarre, and obviously erroneous, results. For example, USAC asserts that **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** are the same individual, apparently because they have the same exceedingly common first name and reside in the same apartment building in **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Similarly, USAC asserted that **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** are the same individual, apparently because they have the same exceedingly common last name and live in the same apartment building in **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**, even though the first name of one subscriber appears to be a man's name, and the first name of the other appears to be a woman's name. These first names do not even remotely resemble one another. But in both groups of subscribers, the individuals are obviously different people who happen to reside in the same apartment building and share an exceedingly common first or last name according to USAC's secret algorithm. It would be patently unfair to deny Lifeline support to these individuals or to assess a potentially enormous monetary penalty against True Wireless based on such obviously erroneous findings by USAC. Indeed, such a denial would, at least arguably, violate 47 C.F.R. § 54.405 (requiring ETCs to "make Lifeline available to *all* qualifying subscribers") (emphasis added).

More generally, for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the alleged duplicates, USAC apparently made subjective judgments on a

case-by-case basis to conclude that particular subscriber listings were duplicates – essentially, if two purportedly separate subscribers have a name/address combination that is “close enough” to a human reviewer, USAC appears to have deemed a duplicate to exist. But even if USAC’s judgments were reasonable in some cases, applying that standard *at all* necessarily reflects an impermissible deviation from the Commission’s “same name, same address” standard. Given the need for True Wireless (or, for that matter, ETCs of any size) to rely on computer matching and computerized sorting to identify duplicates as a matter of practical business reality, only exactly matching name/address duplicates may permissibly “count” for this purpose. Even if it were permissible for the Commission or USAC to adopt a definition of “duplicate” that permits the use of some form of subjective judgment as to names or addresses that are “close enough” for these purposes, it violates due process for the Commission or USAC to purport to adopt such a standard and then impose it on *past* behavior, because in that case the ETCs will not have received “fair notice of what is prohibited.”³⁷

In short, based on current FCC rules and guidance from the Commission to date, USAC could not have lawfully determined that the particular subscribers represent intra-company duplicates.

VI. THE BUREAU’S DENIAL IGNORES THE IMPACT OF THE COMMISSION’S “SAME NAME, SAME ADDRESS” STANDARD ON CARRIERS’ EFFORTS TO IDENTIFY AND ELIMINATE INTRA-COMPANY DUPLICATES.

Despite USAC’s erroneous departure from the Commission’s guidance on intra-company duplicates, as noted above, the Bureau denied True Wireless’ request for review. Yet the Bureau’s Denial ignores an essential fact – that in taking steps to avoid duplicates, ETCs such as

³⁷ Federal Communications Commission v. Fox Television Stations, Inc., 132 S. Ct. 2307, 2317 (2012).

True Wireless simply adhered to the Bureau's own express guidance that "intra-company duplicate" mean a second subscriber with the "same name" and the "same address," and were entitled (and indeed, required) to rely on that definitional standard when considering measures to weed out duplicates. The Bureau, in essence, faults True Wireless for relying on the standard that the Bureau itself announced on delegated authority from the Commission,³⁸ belatedly faulting True Wireless for "failing" to take investigative steps that would have been *inconsistent* with that standard.³⁹

For example, the Bureau decision faults True Wireless and other petitioners, stating that "[p]etitioners have not presented sufficient evidence indicating that the subscribers at issue were separate eligible Lifeline subscribers and not duplicates."⁴⁰ This is erroneous for two reasons. First, it impermissibly shifts the burden of proof to True Wireless. Second, it ignores that fact that under the Commission's guidance, the fact that a subscriber had a different name or a different address was, *in itself*, sufficient evidence that the subscribers were separate and not intra-company duplicates. Failing to recognize either issue, the Bureau's denial concludes that True Wireless' supposed failure of evidence somehow allows USAC to depart from the "same name, same address" standard. The Bureau concluded that "[i]n the absence of such evidence, we affirm USAC's decision to treat the relevant customer records as unlawful intra-company duplicates, and we find that Petitioners violated our rules by seeking duplicative

³⁸ *Duplicate Payments Order*") at ¶ 2 ("Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.").

³⁹ Indeed, nothing in the Commission's rules or the Communications Act required such an investigation, either prior to submitting the claim for Lifeline subsidies, or after receiving notice from USAC of the alleged duplicates. Attempting to retroactively impose such a standard is arbitrary, capricious, and contrary to existing Commission rules and policies.

⁴⁰ Bureau Denial, ¶ 7.

compensation.”⁴¹ The Bureau’s insistence that carriers “investigate nearly identical and substantially similar records,” suffers from the same flaw, ignoring the fact that the Commission had established that intra-company duplicates meant subscribers with the “same” name and address, not “nearly identical” or “substantially similar” names or addresses.⁴² Similarly, characterizing USAC’s duplicate methodology as “conservative” is beside the point; the point is that USAC’s methodology departed from the standard established in the Commission’s *June 2011 Guidance Letter*.

The Bureau’s “separate and independent basis” for its decision fares no better, as it again rests on ignoring the “same name, same address” standard established by the Commission. The Bureau holds that “under section 54.410(a) a reasonable duplicate detection policy or procedure ... would have (i) identified identical, *nearly* identical and *substantially similar* records of the type identified by USAC,” and subjected those records to further investigation.⁴³ But while such a policy might possibly have been reasonable in the absence of guidance, such a policy was not reasonable in light of the “same name, same address” standard that the Commission had established. Indeed, applying a looser “nearly identical” or “substantially similar” standard, rather than the “same name, same address” standard that the Commission had established would have potentially violated True Wireless’ obligation, as an ETC to make Lifeline available to all qualifying subscribers. *See* 47 C.F.R. § 54.405. Finally, the fact that USAC was able to “design a system” that implemented a different standard, one *contrary to that set forth by the Commission*, does not prove that True Wireless should have done so. Yet the Bureau’s decision

⁴¹ Bureau Denial, ¶ 7.

⁴² Bureau Denial, ¶ 7.

⁴³ Bureau Denial, ¶ 14.

implies that the technical feasibility of such a system justified, and even mandated, True Wireless' departure from the only guidance the Commission had provided.⁴⁴

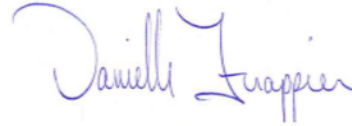
VII. RELIEF REQUESTED, AND RESPECTS IN WHICH THE BUREAU'S ACTION SHOULD BE CHANGED

The Commission should reverse the Bureau's action, granting rather than denying True Wireless' request for review, and vacating the underlying USAC IDV findings. The Commission should hold that the straightforward "same name, same address" standard the Commission established to define "intra-company duplicates" was applicable to USAC's IDVs, hold that USAC was require to abide by the "same name, same address" standard, and hold that USAC's findings are erroneous for failure to apply the correct standard. Moreover, the Commission should order USAC to disgorge the Lifeline support that it has already recovered for each of the alleged intra-company duplicates at issue here.

To the extent that the Commission holds that USAC could depart from that standard, it should set forth revised criteria defining "intra-company duplicates," and defining just how similar two different names must be to be considered the same. Finally, even if the Commission replaces the "same name, same address" standard with a looser, similarity-base standard, the Commission should hold that True Wireless cannot be penalized for violating a new, vague standard that had not been announced by either the Commission or USAC when the events that were subject to USAC's IDVs took place, particularly where neither the Commission nor USAC had provided carriers like True Wireless with guidance on how to judge whether customer records were "close enough" to be the "same."

⁴⁴ See Bureau Denial, ¶ 14.

Respectfully submitted,



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Dated: June 6, 2018